



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Dept. of Medical Assistance Services
VAC Chapter Number:	12 VAC 30 Chapter 150
Regulation Title:	Uninsured Medical Catastrophe Fund
Action Title:	UMCF
Date:	April 15, 2002: Effective June 6, 2002

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

This regulatory action creates a new Chapter 150 for DMAS in the Virginia Administrative Code for the Uninsured Medical Catastrophe Fund. This chapter contains eligibility criteria for potential applicants, covered services, and other standards.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

There are no changes in this final regulation over that which was initially proposed.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

I hereby approve the foregoing Regulatory Review Summary with the attached amended Virginia Administrative Code pages and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4007, of the Administrative Process Act.

4/15/2002

/s/ Patrick W. Finnerty

Date

Patrick W. Finnerty, Director

Dept. of Medical Assistance Services

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

The Code of Virginia (1950) as amended, §32.1-324.3, grants to the Board of Medical Assistance Services (BMAS) the authority to publish regulations to administer the Uninsured Medical Catastrophe Fund. The Code of Virginia (1950) as amended, §32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) §§2.2-4007 and 2.2-4013, for this agency's promulgation of proposed regulations subject to the Governor's review.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this proposal is to develop rules to administer the Uninsured Medical Catastrophe Fund (UMCF). In addition to criteria specified in the *Code*, these regulations:

- (i) further define an uninsured medical catastrophe as a life-threatening illness or injury requiring specialized medical treatment, hospitalization, or both;
- (ii) establish procedures for distribution of moneys in the Fund to pay for the costs of treating uninsured medical catastrophes;
- (iii) establish application and appeals procedures; and
- (iv) establish criteria for eligibility for assistance from the Fund and the prioritization and allocation of available moneys among applicants for assistance from the Fund.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

Virginia taxpayers can designate a portion of their Virginia tax refund to the Uninsured Medical Catastrophe Fund beginning with their 1999 tax returns and anyone can make a contribution to the fund at any time. Funds will first become available January 2, 2001, and, thereafter, will be available the month after tax returns are filed or after contributions are posted to the Fund. It is anticipated that funding will be limited relative to the potential need.

The Fund should have a positive impact on Virginia families by providing access to treatment for uninsured medical catastrophes. Because the UMCF regulations are designed to help uninsured Virginians receive treatment that they otherwise would not have received, the UMCF will not pay for services already rendered or certain services specified in the regulations, including emergency services. Hospitals are already required to provide emergency services.

Regulations are necessary to develop criteria and procedures for determining who will be eligible to receive funds. Due to the nature of uninsured medical catastrophes, this new program can make the difference between life and death. It will be very important that funds are distributed fairly.

There will be four criteria that must be met prior to disbursement of funds. The first criterion is that the individual meets the eligibility rules. The second criterion is that there is an approved treatment plan. The third criterion is that funds are available. The fourth criterion is that a provider can be found who is willing to accept the UMCF contract.

In addition to being a resident of Virginia and either a citizen or resident legal alien, an eligible individual must have income equal to or less than 300% of the Federal Poverty Level, have a life-threatening illness or injury, and be uninsured for the needed treatment.

These regulations establish an income limit above which UMCF funds will not be available. The 2000 income limits are listed below. They are to be updated annually effective July 1 following the issuance of annual figures by the federal government.

Family Size	300% of Poverty (Annual Income)
1	\$25,050
2	\$33,750
3	\$42,450
4	\$51,150
5	\$59,850

The UMCF is not a poverty program. Most Virginians who are uninsured are so because their employers do not offer health insurance. In addition, it is generally difficult and costly to purchase individual health insurance. However, the agency feels that most uninsured Virginians with incomes over 300% of poverty should have access to affordable health insurance or have the resources to pay for treating a medical catastrophe. Given the limited funding which is expected for this program, the agency believes that it would be most beneficial to the neediest citizens to target funds to persons with incomes equal to or less than 300% of the Federal Poverty Level.

The *Code of Virginia* indicates that an uninsured medical catastrophe shall include a life-threatening illness or injury requiring specialized medical treatment, hospitalization, or both. This regulation further defines life-threatening as an illness or injury that, if left untreated, would more than likely result directly in death. The agency intends to cover only acute illnesses or injuries or acute phases of chronic illnesses.

The regulation clarifies that an eligible individual may be insured in general, but may be uninsured for the particular needed medical treatment. For example, someone may have health insurance that does not cover organ transplants. Such an individual could apply for UMCF payment for an organ transplant, if the failure to receive a transplant would be life-threatening, and the other stated criteria were met.

The UMCF, in general, will pay for services needed to treat acute illnesses or injuries or the acute phases of chronic illnesses. The services must be part of an approved treatment plan. The proposed treatment plan must be for a course of treatment to remediate, cure, or ameliorate the life threatening illness or injury. The treatment plan must not be open-ended. The UMCF will

not be responsible for long-term maintenance medications or additional treatments beyond the course of treatment approved by DMAS. The UMCF will not pay for custodial care, for transportation, or for mental health services.

Coverage will be limited to medical or surgical services that are not considered to be experimental or investigational by the medical community. The proposed treatment plan should reflect the medical community's standard of practice for treating the particular life threatening illness.

In addition, the UMCF will only cover certain organ and tissue transplants. Transplants are some of the most expensive treatments that could be covered by the UMCF. There can be waiting lists for organs and the transplant procedures vary in effectiveness. Because of the concern about limited funding, the agency proposes to limit coverage of transplants. This will avoid tying up UMCF funds to assist individuals on transplant waiting lists to receive transplants when the procedure has demonstrated limited effectiveness for the diseases being treated. These regulations propose that the UMCF cover only liver, kidney, heart, lung, and bone marrow/stem cell transplants. Livers, kidneys, heart, lung, and bone marrow/stem cell transplants are generally available and generally very effective. Kidney transplants on average cost less than \$10,000. Autologous bone marrow/stem cell transplants can cost \$80,000 and allogeneic bone marrow/stem cell transplants can cost \$120,000. Liver transplants are the most expensive of the three transplants and can cost \$155,000. The actual costs of these transplants (except for kidney) could be more as the above amounts are the amounts DMAS pays as an all-inclusive rate.

Even if an applicant is determined eligible and the treatment plan is approved, expenditures will be limited to available funding. The UMCF is not an entitlement program. The agency anticipates that funding will be limited relative to the need. These regulations establish objective criteria for determining who gets available funds. Funds will be disbursed on a first-come, first-served basis based on the date the original application is received by DMAS or its agent. The agency will also develop a waiting list, if necessary.

Finally, the agency cannot disburse these designated funds unless there is a provider willing to contract with DMAS. The agency intends to establish a global fee to cover the costs of the proposed treatment plan. The global fee will be based on the Medicaid reimbursement methodology to cover the services in the approved treatment plan. This is similar to the process the agency uses to pay for transplant procedures under Medicaid. The agency will work with applicants to find a willing provider but the responsibility for identifying a willing provider will ultimately rest with the applicant.

On the basis of the individual's contract, funds will be fully committed from the UMCF and unavailable to other applicants. This will insure that the UMCF will cover treatment in full once a commitment has been made. The committed funds will be available for up to one year after the contract is signed. Any unused funds at the end of the contracted course of treatment will revert back to the UMCF.

These regulations also establish application and appeals procedures. Funds will be committed on behalf of eligible individuals on a first-come, first-served basis based on the date and time the

original signed application is received by DMAS or its agent. This date and time will also determine ranking on a waiting list, if necessary. DMAS will determine eligibility and approval of the treatment plan within 60 days of the application date.

If funds are not available for all applicants, applicants who have been determined eligible and whose treatment plans have been approved will be placed on a waiting list on a first-come, first-served basis based on the date and time their original, signed applications are received by DMAS or its agent. DMAS may review the eligibility and treatment plan decisions if more than 60 days have elapsed between the date that DMAS initially determines an applicant eligible and approves the treatment plan, and the date that funds become available to assist the highest ranking individual on the waiting list. The approved treatment plan takes into account applicants' health status at the time the treatments are approved. If applicants' health status deteriorates while they are on the waiting list, the treatment plan may no longer be appropriate and can be revised.

Applicants have the right to appeal adverse determinations regarding eligibility and their treatment plans. Every effort will be made to make determinations before funds become available. Applicants will have an expedited appeal process that will protect their place on the waiting list for available funds. An applicant will lose his position on the waiting list during a normal appeal or if the appeal decision is unfavorable and the applicant sues in circuit court. If an applicant subsequently receives a favorable decision, he or she is restored to the waiting list with the ranking based on the date and time the original signed application was received by DMAS or its agent.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The primary advantage of the UMCF is that some uninsured Virginians have medical treatments for medically catastrophic illnesses that they otherwise may not have been able to receive because they could not pay for it. The advantage to the agency and the Commonwealth is that these regulations will specify patient criteria, service coverage requirements and limitations, and reimbursement requirements necessary to administer these public funds.

The primary disadvantage is expected to be the limited source of funds. This program's success is completely dependent on individual tax payers' donations to the Uninsured Medical Catastrophe Fund. As a result, the UMCF may be able to serve only a few uninsured Virginians who have medical catastrophes. In addition, the UMCF will not help uninsured Virginians who have already received medical services that they cannot pay for. There are not expected to be any disadvantages to the agency or the Commonwealth.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

DMAS' proposed regulations were published in the October 8, 2001, *Virginia Register* (VA. R 18:2, p, 166) for their public comment period from October 8 through December 7, 2001. No public comments were received. DMAS received a few phone inquiries about the Fund and the regulations which were responded to at that time.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

DMAS is recommending no changes in these final adopted regulations over those which were proposed for the public comment period.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This program will not have any negative impacts on families in the Commonwealth. By providing a funding source for a medical crisis, this program may enable an eligible individual to remain with his family longer than would otherwise be possible as well as may defray potentially devastating costs of needed health care services.